IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7111 OF 1999

Sidhappa Gurupadappa Bijargi)
occupation Agriculturist, r/at)
Mangalwar Peth, Jath, Taluka)
Jath, District Sangli) ...Petitioner.

V/s

1.The Special Land Acquisition)
Officer No.V., Sangli.)
)
2. The State of Maharashtra)
)
3. The Maharashtra State Road)
Transport Corporation, having)
Head Office at Bombay Central,)
Mumbai.) Respondents.

Mr. M.L. Patil for the petitioner.

Mr. V.S. Gokhale, AGP for respondent Nos. 1 and 2.

Mr. G.S. Hegde for respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 17th August, 2005.

ORAL JUDGMENT: (Per R.M.S. Khandeparkar, J.)

1. Heard.

2. By the present Petition, the petitioner seeks the relief in the nature of setting aside of the land acquisition proceedings initiated pursuant to the Notification dated 27/01/1998 issued under section 4 of the Land Acquisition Act, 1894 and further for quashing notice dated 09/04/1998 issued under section 9 of the said Act.

3. The contention of the petitioner is that the respondents should not have proceeded to issue notice dated 09/04/1998 under section 9 of the said Act without complying with the provisions of section 6 of the said Act. It is the case of the petitioner that after issuance of the notification under section 4 on 27/01/1998, the respondents did not issue any declaration under section 6 of the said Act and, consequently, there was no occasion for the respondents to proceed with the land acquisition proceedings and to issue notice under section 9 on 09/04/1998. The respondents having proceeded to issue notice under section 9 without complying with the mandatory provisions of section 6, the entire proceedings are bad-in-law and, therefore, the same should be quashed and set aside.

4. On the other hand, it is the case of the respondents that notification under section 4 was issued on 24/09/1987 and after entertaining objections under section 5-A and dealing with the same, a declaration under section 6 was issued on 13/10/1988. The petitioner sought to challenge those acquisition proceedings by filing a Writ Petition bearing No.130 of 1989 wherein this Court had stayed the proceedings. However, the said Petition was dismissed on 05/06/1996 and, thereafter, further steps were taken by the respondents for conclusion of the land acquisition proceedings. In the process, an addendum was issued under section 6 on 14/08/1998 as well as on 21/08/1998. Thereafter, notice was issued under section 9 of the said Act on 09/05/1998 and, after hearing the parties, final award was passed on 31/08/1998. Consequently, in October, 1998, notices were issued under section 12(2) and possession of the property in question was taken on 13/01/1999. It is the case of the respondents that notice dated 09/05/1998 was not in relation to notification dated 17/01/1998 but in consequence of a declaration under section 6 dated 20/03/1989, followed by addendum issued on 14/08/1998.

5. Considering the stand taken by the respondents in reply to the case putforth by the petitioner, it was sought to be argued on behalf of the petitioner that assuming that further steps which were taken by the respondents to complete the land acquisition proceedings were on the basis of a declaration under section 6 issued on 20/03/1989 then, clearly, the award which was passed in the matter was passed beyond the period of limitation prescribed under section 11-A of the said Act. The Writ Petition was dismissed on 05/06/1996, whereas the award passed on 31/08/1998. It was clearly beyond the period of two years from the date of the dismissal of the Writ Petition. Consequently, the interim order passed in the petition also stood vacated. In that regard, the learned advocate for the petitioner also prayed for leave to amend the Petition by incorporating the ground of limitation in the Petition.

6. Once it is clarified by the respondents that the proceedings which continued after dismissal of the Writ Petition on 05/06/1996 were in relation to the land acquisition proceedings initiated consequent to the publication of notification under section 4 on 24/09/1987 and in the absence of any material being placed on record to disclose that notice dated

09/05/1998 was in fact in relation to the notification dated 27/01/1998, the contentions sought to be advanced on behalf of the petitioner are to be held as devoid of substance. It is a matter of record that after issuance of declaration under section 6 on 20/03/1989, the petitioner had approached this Court by way of Writ Petition No. 130 of 1989 wherein the land acquisition proceedings were stayed and the said stay stood vacated only after dismissal of the said Writ Petition on 05/06/1996. Consequently, from 1989 till June, 1996, the land acquisition proceedings initiated consequent to the notification under section 4 dated 24/09/1987 were stayed and could not have been proceeded with by the respondents. On dismissal of the said Writ Petition, the stay stood vacated and respondents proceeded with the said proceedings and issued addendum to the declaration under section 6 on 14/08/1998 which was followed by necessary inquiry consequent to the issuance of notice under section 9 and final award was declared on 31/08/1998. The notice dated 09/05/1998, on the face of it, no where discloses that the same was issued in furtherance of the notification dated 27/01/1998. On the contrary, the notice specifically refers to the declaration under section 6 published in official gazette on 13/10/1988 and the affidavit in reply filed on behalf

of the respondents clearly reveal that declaration under section 6 issued consequent to the notification under section 4 dated 24/09/1987 was published in the official gazette on 13/10/1988. Being so, notice dated 09/05/1988 was in relation to the land acquisition proceedings initiated consequent to the notification under section 4 dated 24/09/1987 and not in relation to notification dated 27/01/1998.

7. It was sought to be contended that once the notification under section 4 was issued in relation to the property in question on 27/01/1998, the respondents could not have proceeded to issue notice under section 9 on 09/05/1998 without issuing necessary declaration under section 6 prior to issuance of such notice. Whether respondents should proceed with particular land acquisition proceedings consequent to the issuance of notification under section 4, it is for the concerned authorities to decide and interested person relating to the land which is a subject matter of notification under section 4 cannot acquire any right of insistence on proceeding with the land acquisition proceedings merely on account of issuance of notification under section 4. In fact, the interested persons in relation to the properties which are covered under

such notification do not acquire any right as such consequent to the notification issued under section 4 of the said Act. Being so, merely because no further steps were taken by the respondents consequent to the notification dated 27/01/1998, it cannot be said that any right had accrued in favour of the petitioner either to insist on respondents to proceed with the said land acquisition proceedings pursuant to the said notification or to contend that the earlier proceedings stood lapsed.

8. It is to be noted that it was nobody's case all throughout the proceedings that the land in question which was the subject matter of the notification dated 24/09/1987 was not required for the purpose for which it was sought to be acquired or that the said purpose did not subsist, after dismissal of the Writ Petition which was filed by the petitioner. It is an undisputed fact that the proceedings initiated under notification dated 24/09/1987 were interupted since 1989 on account of Writ Petition filed by the petitioner and stay granted to such proceedings by this Court. In the background of these facts, therefore, the proceedings which were initiated under notification dated 24/09/1987 had not lapsed, nor issuance of notification dated 27/01/1998 under

section 4 could disturb those proceedings. The very fact that respondents did not pursue with the said notification but proceeded with the notification dated 24/09/1987 disclose that the respondents did not want to take any proceedings consequent to the notification dated 27/01/1998. Hence, the contentions sought to be raised, as above, on behalf of the petitioner are to be rejected.

9. As regards request for amendment to the petition by incorporation of the plea regarding bar of limitation in passing award on account of lapse of period of more than two years from the date of issuance of declaration under section 6, undisputedly, no such plea was raised in the Writ Petition. Consequent to the passing of the award, possession of the property was taken over on 13/01/1999. The amendment to the said Act requiring the award to be passed within 2 years from the date of the publication of declaration under section 6 came into force since 1984 i.e. much prior to filing of the petition. No such ground was raised in the petition. There were no steps taken to avoid taking over of the possession of the property consequent to the passing of the award in 1998. In the circumstances, it is too late in the day for the petitioner to seek any amendment to the

petition to incorporate the ground regarding bar of limitation in passing of the award. We do not find it appropriate to allow the petitioner to amend the petition and to raise the said ground in the peculiar facts and circumstances of the case, at this stage. There is no explanation whatsoever for delay and laches on the part of the petitioners in that regard.

10. For the reasons stated above, the Petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR,J.)

(V.M. KANADE, J.)